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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,834	12/21/2001	Brian G. Morin	5389	4942

7590

12/04/2003

Milliken & Company
P.O. Box 1927
Spartanburg, SC 29304

EXAMINER

RUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,834

Applicant(s)

MORIN ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08-11-03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed August 11, 2003, has been entered. Claims 1-3 have been cancelled, while claims 4, 7, and 10 have been amended. Thus, the pending claims are 4-12.
2. Applicant's amendment is sufficient to withdraw the 112, 1st rejection set forth in section 2 of the last Office Action. Additionally, the cancellation of claims 1-3 renders moot the 102(e) rejection set forth in section 7 of the last Office Action.
3. The terminal disclaimer filed with respect to application 10/036,604, is sufficient to overcome the provisional double patenting rejection set forth in section 5 of the last Office Action. Despite applicant's assertion that a terminal disclaimer was submitted with respect to US 6,541,554, no such terminal disclaimer has been filed. Thus, the rejection is maintained as set forth below.
4. Applicant's statement of coassignment of the present invention and the invention of the invention of US 6,541,554 at the time of the claimed invention is acknowledged. However, contrary to applicant's assertion that said statement disqualifies US 6,541,554 as reference altogether, said statement merely obviates the 103 rejection of claims 4-12 as set forth in section 9 of the last Office Action, but not the 102 rejection. See MPEP 2146. Thus, said 103 is hereby withdrawn, but said 102 is maintained as set forth below.

Double Patenting

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 4-12 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of US Patent No. 6,541,554 issued to Morin et al. as set forth in section 4 of the last Office Action.

Claim Rejections - 35 USC § 102

7. Claims 4-12 stand rejected under 35 USC 102(e) as being anticipated by US 6,541,554 issued to Morin et al. as set forth in section 9 of the last Office Action.

Claim Rejections - 35 USC § 102/103

8. Claims 4-12 stand rejected under 35 USC 102(a) as being anticipated by, or in the alternative, under 35 USC 103(a) as being unpatentable over JP 2001-081628 issued to Inoue, as set forth in section 10 of the last Office Action.

Claim Rejections - 35 USC § 103

9. Claims 4-12 stand rejected under 35 USC 103(a) as being unpatentable over US 4,560,734 issued to Fujishita et al. in view of US 5,798,167 issued to Conner et al., as set forth in section 11 of the last Office Action.

Response to Arguments

10. Applicant's arguments filed with the amendment of August 11, 2003, have been fully considered but they are not persuasive.

11. Applicant fails to traverse the 102 rejection of claims 4-12 by the cited Morin patent, but merely relies upon the statement of coassignment to overcome said rejection. However, as noted above, said statement is insufficient to overcome the 102 rejection.

12. Additionally, applicant fails to traverse the 102/103 rejection over Inoue. Therefore, said rejection is hereby maintained.

13. With respect to the Fujishita and Conner rejection, applicant argues that Fujishita "does not provide proper and/or sufficient motivation to incorporate any nucleating agents within polypropylene tape fibers" (Amendment, page 6, lines 3-4). Additionally, applicant notes that Fujishita says it is known to add nucleating agents to said fibers, but asserts Fujishita states "there was no observation of heat shrinkability improvements within those target fibers at all" (Amendment, page 6, lines 7-9). Applicant contends that Fujishita obtains their inventive low-shrink, high-tenacity fibers by other modifications than the use of nucleating agents (Amendment, page 6, lines 9-12). As such, applicant asserts that Fujishita teaches away from the presently claimed invention (Amendment, page 6, lines 12-14).

14. This argument is unpersuasive since Fujishita explicitly teaches the presence of a nucleating agent in the polypropylene fibers. See col. 7, lines 44-46, which states, "Further, when a nucleus-creating agent is added, a somewhat improvement in the heat-shrinkability is observed." Additionally, note claim 10: "Polypropylene fibers according to claim 1, having therein a nucleus-creating agent." Furthermore, it is noted that only instant claims 7-9 even limit

the heat-shrinkage of the fiber. The other claims 1-6 and 10-12 merely require the presence of a particular nucleating agent in a particular amount. The combination of Fujishita and Connoer clearly teaches these requirements. Therefore, the above rejection is hereby maintained.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.


If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
PRIMARY EXAMINER

cj
November 26, 2003